S.B.Civil Writ Petition No.5410/2004

Smt. Snehlata
vs
State of Rajasthan & Ors.

DATE OF ORDER : - 13.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Satish Panhori, for the petitioner.

<><><>

Heard learned counsel for the petitioner.

According to petitioner, the petitioner submitted a duly filled up nomination paper with all necessary documents before the Returning Officer. The petitioner came to know in the evening of 10th Nov., 2004 that petitioner's nomination paper was rejected by the Returning Officer. The petitioner immediately submitted an application before the Returning Officer and demanded for re-consideration of her nomination paper, copy of which is placed on record as Annex.P/3. She stated that she came to know that her nomination paper was rejected by mistake only as she believes that her all papers of nomination were correct and were in accordance with law and there was no defect or error in the nomination paper.

Learned counsel for the petitioner submits that in fact, nomination paper was not rejected on 10th Nov., 2004 and this fact finds

supports from the fact that the copy of the order of the rejection of the nomination paper was not provided to the petitioner despite petitioner's request. The petitioner also sent telegram to the Returning Officer, copy of the telegram is Annex.P/5. However, the petitioner produced the order of rejection of her nomination paper as Annex.P/7, which bears the date 10th Nov., 2004. Learned counsel for the petitioner vehemently submitted that now the petitioner has received a letter from the Returning Officer dated 4th Dec., 2004, copy of which has been produced by the petitioner for the perusal of the court. According to learned counsel for the petitioner in the letter dated 4th Dec., 2004, the Returning Officer admitted that the nomination paper was rejected on 16th Nov., 2004.

Learned counsel for the petitioner submits that though there is a provision for filing election petition in case where the Returning Officer rejects the nomination paper improperly and illegally, but looking to the peculiar facts of the case, the petitioner is challenging the election as well as action of the Returning Officer by filing the writ petition.

According to learned counsel for the petitioner, the petitioner complied with all the requirements for submitting a valid nomination paper and her nomination paper was fully filled up, supported by requird documents whereas the Returning Officer rejected the

nomination paper on the ground that the petitioner has not submitted affidavit attested by notary or Magistrate or by oath commissioner. Therefore, this is an illegality committed by the Returning Officer.

I considered the submissions of learned counsel for the petitioner. It is clear from the Annex.P/7 that the order of rejection of the nomination paper bears the date 10th Nov., 2004. On Annex.P/7 there is endorsement of submitting an application for copy of the order on 16th Nov., 2004 and there is an endorsement that the copy was prepared on 16th Nov., 2004 itself and this was delivered to the petitioner on the same date. The question whether the petitioner's nomination paper was rejected by the Returning Officer after 10th Nov., 2004 or even after office hours is a pure question of fact and there is no material available on record to find out that the nomination paper was rejected by the Returning Officer after closer of office hours or at a time when the Returning Officer could not have done so. Contrary to it, it appears from the Annex.P/3 itself that the petitioner herself came to know that her nomination paper was rejected on 10th Nov., 2004 and she admitted that she has already received the knowledge of rejection of her nomination paper and according to her this rejection was by mistake only. Prima facie these all facts in the light of admission of petitioner herself can be examined in properly filed election petition. The wrong rejection of nomination paper, error of fact or error of law both are to

be examined by the procedure provided under the Act itself for challenging the election. The communication sent by the Returning Officer dated 4th Dec., 2004 sought to be interpreted in the manner to say that nomination paper was rejected on 16th Nov., 2004 whereas the totality of the facts as well as the letter dated 4th Dec., 2004 clearly discloses that it is a communication communicating that petitioner's application demanding the copy of the order of the rejection of the nomination paper was how dealt with.

In view of the above, I do not find any merit in the writ petition. Therefore, the writ petition of the petitioner is dismissed having no merit.

(Prakash Tatia), J.

c.p.goyal/-